

ESTATE OF STEVE PEDERSON

IBLA 87-779

Decided March 7, 1991

Appeal from a decision of the Fairbanks, Alaska, Support Center, Bureau of Land Management, declaring mining claims F-65308 through F-65311 and F-65319 abandoned and void.

Affirmed in part; affirmed as modified in part.

1. Mining Claims: Lands Subject to

Mining claims located on land which has been patented without a reservation of minerals to the United States are null and void ab initio.

2. Federal Land Policy and Management Act of 1976: Assessment Work--
Federal Land Policy and Management Act of 1976: Recordation of
Mining Claim Certificates or Notices of Location--Mining Claims:
Abandonment

Under 43 U.S.C. § 1744 (1988), an owner of an unpatented mining claim must file evidence of annual assessment work or a notice of intention to hold the claim with the proper BLM office before Dec. 31 of each year. Failure to file one of the two instruments within the prescribed time period conclusively constitutes an abandonment of the claim. An unpatented mining claim is not exempt from the filing requirement when the estate of the owner is in probate.

APPEARANCES: Kitty Pederson, personal representative of the estate of Steve Pederson.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Kitty Pederson, personal representative of the estate of Steve Pederson, has filed an appeal from a July 27, 1987, decision of the Fairbanks, Alaska, Support Center, Bureau of Land Management (BLM),

declaring five mining claims abandoned and void. 1/ As the basis for its decision, BLM stated that upon review of its records it had found no assessment affidavits or notices of intention to hold the claims for the years 1985 and 1986, and that such filings were required by 43 U.S.C. § 1744 (1988). The five claims are part of a larger group of contiguous claims owned by Steve Pederson and mined by Nugget Mining Company, a business Pederson operated with his family.

The copies of the notices of location submitted by Pederson show that he located the claims in question and other claims in 1967 and 1968. BLM accepted the filings as satisfying the requirement for recordation of these claims under 43 U.S.C. § 1744 (1988), and assigned serial numbers F-65308 through F-65319. On December 1, 1976, Steve Pederson filed an application for mineral survey for a number of mining claims, including the five claims now under consideration. 2/ In a letter to BLM dated July 21, 1980, the Pedersons stated that the "original application included 5 patented claims" and stated that those claims should be deleted from the application. The five claims identified in the July 21 letter were those in the instant appeal, and the plat for MS 2364 (approved on January 27, 1983) did not include the five claims.

[1] It appears from the record that four of the claims 3/ lie within lands previously conveyed by patent No. 298356 on October 29, 1912. BLM should have declared the four 1968 claims located on previously patented land to be null and void ab initio rather than deeming them to be abandoned and void for failure to file proof of labor or notice of intent to hold. 4/ Mining claims located on land patented without a reservation of minerals to the United States are null and void ab initio, and attempts to record such mining claims or file affidavits of assessment work or notices of intent to

1/ The decision involves the following claims:

SERIAL NUMBER

CLAIM NAME

F-65308

No. 1 Below Discovery

F-65309

No. 2 Below Discovery

F-65310

No. 3 Below Discovery

F-65311

No. 3 1/2 Below Discovery

F-65319

June Bench

2/ The application was assigned serial number F-23152.

3/ The fifth claim, June Bench, F-65319, may include unpatented land. The case record contains no map of the June Bench claim and we are unable to identify its exact location. However, its relationship to other claims was described in the 1967 location notice as follows: "Left limit Niukluk River, right limit of Ophir Creek, and is tied to upper end of No. 2 Portage Island and No. 1 Portage Island Claims." These Portage Island claims were included in MS 2364, and the land to the north of the Portage Island claims is not shown on the relevant master title plat as being patented.

4/ The proofs of labor filed in 1985 and 1986 list the No. 3 Below Discovery claim. The other claims within MS 657 are not listed on any of the proofs of annual labor filed by Pederson.

hold such mining claims are properly rejected. Ralph C. Memmott, 88 IBLA 360 (1985); Rosander Mining Co., 84 IBLA 60 (1984); Henry J. Hudspeth, Sr., 78 IBLA 235 (1984). The four claims (F-65308 through F-65311) are properly declared null and void ab initio. 5/

[2] To the extent that the June Bench placer mining claim (F-65319) is situated on patented land, it is also null and void ab initio. To the extent that this claim may include unpatented land, BLM properly declared this claim abandoned and void.

Under section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1988), the owner of an unpatented mining claim located on public land is required to file evidence of assessment work performed or a notice of intention to hold the mining claim with the proper BLM office before December 31 of each year. Failure to file one of the two instruments within the prescribed time period conclusively constitutes an abandonment of the claim, regardless of the claimant's intent to hold the claim. 43 U.S.C. § 1744(c) (1988); United States v. Locke, 471 U.S. 84 (1985). The failure to file the requisite document during any one filing period will render the claim abandoned and void.

The only proof of labor found in the file referring to the June Bench claim is the one that was filed in 1979. However, the case file abstracts for the claims list the filing of evidence of assessment work filed for the June Bench claim in 1978 through 1984. In Robert Aumiller, 94 IBLA 315 (1986), we held that when the computer printout listing the documents filed for a mining claim lists the affidavit of assessment work as having been timely filed, that evidence will overcome the presumption that the document was not filed arising from its not being in the case file.

After considering both the notices in the file and the case file abstracts, we are left with the fact that there is no evidence of an assessment affidavit or notice of intention to hold the claim having been filed in the years 1985 and 1986. Appellant states that the estate of Steve Pederson has been under probate for several years, and that she "received correspondence from the BLM stating June Bench was not eligible to Nugget Mining Company." 6/ She further states that if she knew the June Bench was to be included in the yearly assessment reports she would have included it. These observations are unavailing.

The conclusive presumption of abandonment which attends the failure of a claimant to file an instrument required by 43 U.S.C. § 1744 (1988) is imposed by the statute itself. As a matter of law, it is self-operative

5/ Appellant should note that this decision has no effect upon the ownership or validity of the patented claims described in patent No. 298356.

6/ It is not clear what appellant means when she refers to correspondence from BLM stating June Bench was "not eligible to Nugget Mining Company." This particular case record contains no such correspondence. Only the proof of labor filed in 1979 refers to the June Bench.

and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with the authority to waive the requirements of the Act, or to afford a claimant any relief from the statutory consequences. David Mathews, 74 IBLA 329 (1983); Dan Walker, 74 IBLA 153 (1983); Charles E. Bean, 73 IBLA 108 (1980). The only exception to the filing requirement is that no filing is required when a patent application has been filed and a final certificate has issued. See B. J. Londo, 109 IBLA 353 (1989); U. A. Small, 108 IBLA 102 (1989); Gordon B. Copple, 105 IBLA 90, 95 I.D. 219 (1988).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed with respect to the June Bench claim (F-65319), and affirmed as modified with respect to the No. 1 Below Discovery (F-65308), No. 2 Below Discovery (F-65309), No. 3 Below Discovery (F-65310), and No. 3 1/2 Below Discovery (F-65311) claims.

R. W. Mullen
Administrative Judge

I concur:

Bruce R. Harris
Administrative Judge